

FOI RESPONSE ISSUED - 7 November 2023

REQUEST

Received on 10 October 2023 which requested, for four consecutive periods covering 2010 to 2023:-

‘....information contained in any Section 31 investigations or any investigations carried out by the Scottish Legal Aid Board of law firms and their accounts and legal aid claims - concerning any allegations or information in relation to legal aid claims submitted by those law firms....’

OUR RESPONSE TO THE INFORMATION REQUEST UNDER THE 2002 ACT

SLAB does hold information within your specification. We consider that we are exempt from disclosing for reasons that I will go on to explain. However, we are prepared to disclose some information, as I will also explain, notwithstanding exemption is available to us.

Disclosed Information

Certain information in relation to Section 31 investigations and proceedings has been or is published by us. In that respect the exemption under Section 25 of the Freedom of Information (Scotland) Act 2002 (“FOISA”) - Information otherwise accessible - applies or may apply. Be that as it may, we enclose copies of the published notices in respect of the following:

Published Notices in relation to the Exclusion under Section 31(3) of the Legal Aid (Scotland) Act 1986

Mark Strachan, Advocate

On 30th June 2014, the Section 31 Committee of the Scottish Legal Aid Board excluded, Mark Strachan, Advocate, from the provision of legal aid.

The exclusion under section 31 of the Legal Aid (Scotland) Act 1986 excludes Mr Strachan from being selected to advise, act for or represent a person seeking or in receipt of legal aid or advice and assistance, or from giving advice and assistance to or from acting for a person to whom legal aid is made available.

This exclusion was with effect from Monday 30th June 2014 and thereafter without limit of time.

The Section 31 Committee was satisfied that there was good reason so to exclude Mr Strachan on the following basis:

1. In claims for payment from the Legal Aid Fund, creating duplicate and fabricated travel charges when acting for persons to whom Legal Aid or Advice and assistance has been made available;
2. In claims for payment from the Legal Aid Fund, deliberately deceiving or attempting to deceive SLAB when acting or selected to act for persons to whom Legal Aid or Advice and assistance has been made available.

Gerard Tierney, Solicitor, Auchinleck

On 22nd September 2014, the Section 31 Committee of the Scottish Legal Aid Board excluded Gerard Tierney, Solicitor, Auchinleck, from the provision of legal aid.

The exclusion under section 31 of the Legal Aid (Scotland) Act 1986 excludes Mr Tierney from being selected to advise, act for or represent a person seeking or in receipt of legal aid or advice and assistance, or from giving advice and assistance to or from acting for a person to whom legal aid is made available.

This exclusion was with effect from Monday 22nd September 2014 and thereafter without limit of time.

The Section 31 Committee was satisfied that there was good reason to exclude Mr Tierney on the following basis:

1. Legal aid account entries were unsupported by file content evidencing that work had actually been carried out;

2. File content in legal aid files had been created retrospectively to support account charges;
3. Legal aid account entries in accounts submitted for payment were unsupported by third party checking;
4. A number of client files for legal aid cases for clients had incomplete client application form mandates missing information which it is compulsory for the solicitor to ensure is recorded;
5. A number of client files for legal aid cases for clients contained no client application form mandates.

Kevin Frederick MacPherson, Solicitor, Stornoway

The Section 31 Committee of the Scottish Legal Aid Board, having considered the referral to the Committee in respect of Kevin Frederick MacPherson, Solicitor, Stornoway, excludes Mr MacPherson, with effect from 31st July 2015 and thereafter without limit of time, from being selected to advise, act for or represent a person seeking or in receipt of legal aid or advice and assistance, or from giving advice and assistance to or from acting for a person to whom legal aid is made available.

The Section 31 Committee was satisfied that there was good reason to exclude Mr MacPherson on the basis of his conduct whilst delivering children's legal assistance, whereby in an email exchange with a third party he referred or alluded, inappropriately or unnecessarily, to the written statement of a witness that had been disclosed to him in the case by the Children's Reporter.

The Committee considered that the said conduct was wholly inconsistent with that expected of a solicitor delivering publicly funded legal services.

A solicitor delivering publicly funded legal services requires to maintain and demonstrate high standards of professional conduct and the public are entitled to rely on, and have confidence that, solicitors delivering publicly funded legal services adhere to such standards, and do not conduct themselves in a manner such as that demonstrated by Mr MacPherson.

James Reilly, Solicitor, Glasgow

The Section 31 Committee of the Scottish Legal Aid Board has ordered that James Reilly, formerly of Messrs Reilly Cassidy & Co, Glasgow, be excluded from the provision of legal aid for a period of two years with effect from 1 September 2019.

This means that he cannot provide legal aid or advice and assistance during this period.

The removal follows an investigation which found that Mr Reilly's conduct was wholly inconsistent with that required or expected of a solicitor delivering publicly funded legal services.

The investigation found there had been recklessly inaccurate recording of time claimed to have been spent by Mr Reilly perusing case related documents or considering, viewing or listening to other evidential material.

It was found that he had routinely created records some time after undertaking work, rather than at the time of the work, and that when creating records he had reckless disregard for the accuracy of the detail recorded and the resulting fee claims.

A hearing accepted Mr Reilly's explanation that several background business and personal factors contributed to an approach to record-keeping that was materially inadequate.

However, it was considered that these could and should have been addressed, and that Mr Reilly's failure so to do was highly reckless. Mr Reilly's submission that no dishonesty was intended was accepted.

That comprises the extent of the information we are able or willing to disclose.

Withheld Information

As indicated we consider that further information we hold is exempt from disclosure, variously, by virtue of the following exemptions. Before I detail these, it may assist understanding our position if I explain that SLAB considers that the investigations it carries out into whether there are reasons to exclude solicitors or advocates from the provision of legal aid or otherwise investigation into abuse of legal aid must be carried out with the utmost confidentiality and sensitivity, unless and until proceedings, findings or outcomes are appropriately moved to the public domain.

Exemptions Applied

Section 26 (a) of the Freedom of Information (Scotland) Act 2002 - disclosure of the information is prohibited under an enactment.

Section 30 (c) of the Freedom of Information (Scotland) Act 2002 - disclosure of the information would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

Section 34(1)(a)(i) of the Freedom of Information (Scotland) Act 2002 - the information is held for the purposes of an investigation which the authority has a duty to conduct to ascertain whether a person should be prosecuted for an offence

Section 34(1)(b) of the Freedom of Information (Scotland) Act 2002 - the information is held for the purposes of an investigation, conducted by the authority, which in the circumstances may lead to a decision by the authority to make a report to the procurator fiscal to enable it to be determined whether criminal proceedings should be instituted

Section 34(2)(b) of the Freedom of Information (Scotland) Act 2002 - the information is held at any time by a Scottish public authority for the purposes of any other investigation being carried out.

Section 35(1)(a) of the Freedom of Information (Scotland) Act 2002 - disclosure of the information would be likely to prejudice substantially the prevention or detection of crime

Section 35(1)(b) of the Freedom of Information (Scotland) Act 2002 - disclosure of the information would be likely to prejudice substantially the apprehension or prosecution of offenders

Section 35(1)(c) of the Freedom of Information (Scotland) Act 2002 - disclosure of the information would be likely to prejudice substantially the administration of justice

Section 35(2)(a) of the Freedom of Information (Scotland) Act 2002 - the purposes are to ascertain whether a person has failed to comply with the law;

Section 35(2)(b) of the Freedom of Information (Scotland) Act 2002 - the purposes are to ascertain whether a person is responsible for conduct which is improper;

Section 35(2)(c) of the Freedom of Information (Scotland) Act 2002 - the purposes are to ascertain whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise;

Section 35(2)(d) (ii) of the Freedom of Information (Scotland) Act 2002 - the purposes are to ascertain a person's fitness or competence in relation to any profession or other activity which the person is, or seeks to become, authorised to carry on;

Section 36 (2) of the Freedom of Information (Scotland) Act 2002 - disclosure of the information would constitute an actionable breach of confidence.